

(1993) 05 CAL CK 0023
In the Calcutta High Court

Case No : Appeal No. 515 of 1992 arising out of Matter No. 4821 of 1991

Eastern Coalfields Ltd.

APPELLANT

Vs

Ravi Udyog

RESPONDENT

Date of Decision : 06-05-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 95
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 70
Law Commission Act, 1965 — Section 3(1)
Supreme Court Act, 1981 — Section 31

Citation : (1993) 2 ILR (Cal) 312

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Amal Kanti Bhattacharjee, J

Bench : Division Bench

Advocate : Pradesh Kumar Mallick, Pratap Chatterjee, Debal Banerji and Udayan Sen, for the Appellant; P.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Bhagabati Prasad Banerjee, J.—This is an appeal against the judgment and order dt. June 2, 1992, passed by U.C. Banerjee J. in Matter No. 4821 of 1991. By the said order the learned trial Judge disposed of the writ application with the following directions: The Eastern Coalfields Ltd. shall pay a sum of Rs. 76 lacs to the writ Petitioners, being the admitted value of the work done, within a period four weeks from the date of this order. But since Eastern Coalfields have also noted a claim for damages in the counter-claim the writ Petitioners shall file an Indemnity Bond to the extent of Rs. 50 lacs, in favour of Eastern Coalfields a duplicate copy whereof shall be filed with the Registrar, Original Side, Calcutta, within a period of" two weeks from the date hereof.

2. It is, however, clarified that the payment of the writ Petitioner shall be released by Eastern Coalfields Ltd. within Indemnity Bond. The Eastern Coalfields Ltd. however, would be at liberty to institute such proceeding or proceedings, as they may be advised for recovery of their dues, if any, in accordance with law. In

the event, however, such proceeding initiated within a period of three months from the date hereof the Indemnity Bond shall remain valid until after the disposal of the said proceedings, and in that event the writ Petitioner is directed to keep the Bond alive till the disposal of such proceedings.

3. In the event no such proceeding is initiated within the period of three months as noted above; the Indemnity Bond directed above, shall stand automatically discharged.

4. The facts and the circumstances of the case under which the learned trial Judge passed the said order are follows: In 1978 several contractors were engaged by Eastern Coalfields Ltd. for hiring Heavy Earth Moving Machines in order to remove overburden and coal in various small open cast patches of Eastern Coalfields Ltd. In 1984 in pursuance of an open Tender floated by Eastern Coalfields Ltd., 7 contractors including Ravi Udyog. Writ Petitioners opposite parties were awarded the job at various open cast patches under Eastern Coalfields Ltd., and carried on the job for valuable coal production of Eastern Coalfields Ltd. accordingly. The said Ravi Udyog had been engaged since 1980 without any break by the Eastern Coalfields Ltd. for the work of hiring of Heavy Earth Moving Machine in various small open cast patches of the said Appellants. Writ Petitioners opposite parties received a work order from Eastern Coalfields Ltd. on April 14, 1988 the purpose whereof, was to engage the writ Petitioners as one of the 7 contractors for hiring of Heavy Earth Moving Machine in order to remove overburden coal in various small cast patches of Eastern Coalfields Ltd. The said work order dated April 14, 1988, was awarded for the period of three years with effect from April 1, 1988, in pursuance of the offer placed by the writ Petitioners opposite parties and received by the Appellants on April 14, 1988. In February 1991 the writ Petitioners opposite parties received another work order from Eastern Coalfields on February 15, 1991, for the purpose of hiring of Heavy Earth Moving Machine in order to remove overburden coal in various small cast patches of Eastern Coalfields Ltd. The validity period of the said work order dated April 14, 1988, expired, but in view of the course of dealing between the parties it was alleged that the writ Petitioners opposite parties legitimately expected that such work order would be renewed for a further period of 3 years with effect from April 1, 1992. On March 14, 1991, the writ Petitioners opposite parties received two letters from Eastern Coalfields Ltd. stating, inter alia, that the work orders issued would remain operative until upto March 31, 1991. On April 1, 1991, the writ Petitioners opposite parties moved a writ application before the learned trial Judge, inter alia, for an order of continuance of the work order and for extension of the validity period thereof. On the said writ application being moved the learned trial Judge directed status quo as on March 31, 1991, to be maintained for a period of 10 days. The said order of maintaining status quo was extended from time to time, and ultimately by order dated July 17, 1991, the learned trial Judge dismissed all the writ petitions and vacated the interim orders. Thereafter the writ Petitioners opposite parties preferred an appeal against the said order dated July 17, 1991, and made an

application for stay. The Division Bench of this Court refused to grant any stay of the operation of the order dated July 17, 1991, by an order dated July 30, 1991, and on July 25, 1991, the Appellants, Eastern Coalfields advised the writ Petitioners opposite parties to stop work forthwith. The question that calls for determination in this appeal is whether the writ Petitioners opposite parties were entitled to get payment of money in respect of the worked done and services rendered between April 1, 1991, and July 25, 1991, and whether the writ Court exercising powers and jurisdiction under Article 226 of the Constitution of India can direct payment of money in favour of the writ Petitioners if the claim is an admitted one. It is not disputed that six other contractors moved six separate writ petitions upon which similar orders were passed for extension, as a result whereof extension of the period of validity of the works order as effected and it is stated that those six contractors were paid their dues by the Appellants for the aforesaid period and that in so far as the writ Petitioners opposite parties are concerned, part payments have been made by the Appellant, to the writ Petitioners opposite parties in respect of the works done for the period from April 1, 1991, to July 25, 1991. The learned trial Judge on the basis of the prayer made by the writ Petitioners opposite parties directed the Appellants Eastern Coalfields Ltd. to measure the works done and to make payments in respect thereof. The Appellants filed affidavit-in-opposition to the writ application affirmed by one Jyotish Kumar, General Manager of the Appellants and in para. 16, of the said affidavit-in-opposition it was admitted that the works done by the "writ Petitioners opposite parties were valued at Rs. 76 lacs, but the Appellants have claimed for damages amounting to Rs. 223 lacs and upon giving credit to the writ Petitioners for the said sum of Rs. 76 lacs, a sum of Rs. 147 lacs was payable by the writ Petitioners opposite parties to Eastern Coalfields Ltd. On April 21, 1991, the learned trial Judge passed an order after hearing the parties to the writ petition whereby a Special Officer was appointed for the purpose of supervising the measurement of the total works done by the writ Petitioners opposite parties from April 1, 1991, to July 25, 1991, and the Special Officer so appointed was directed to make his report on or before June 8, 1992. In the report of the Special Officer appointed by the learned trial Judge it was recorded that the final measurement in the order dated April 21, 1992, had already been carried out and that there was no dispute between the parties with regard to quantum that had been done by the writ Petitioners opposite parties in the several collieries inasmuch as the measurements so produced before the Special Officer in all the collieries contained the signature of both sides. Further there was no dispute with regard to the total value of the work that had been carried out by the writ Petitioners opposite parties from April 1, 1991, till the date of the works executed by the writ Petitioners opposite parties. From the report of the Special Officer it was clear that there was no dispute with regard to the quantum of the works done and also the value of such works performed by the writ Petitioners opposite parties and that the Appellants had also admitted on affidavit before the learned trial Judge that the money value of such works done by the writ Petitioners opposite parties as Rs. 76 lacs as per contractual rates. After the

Special Officer had filed the report in terms of the Order passed by the learned trial Judge on the question to be gone, by the Special Officer, no objection was raised with the said report of the Special Officer nor any application was made for setting aside the said report or taking exception to any of the findings of the Special Officer of the report. It is also admitted that in order to perform the works by the writ Petitioners opposite parties, materials were required to be supplied by the Appellants, Eastern Coalfields Ltd., and as a matter of fact for the purpose of carrying out those jobs for April 1, 1991 to July 25, 1991, the Appellants Eastern Coalfields supplied blasting power and/or explosives to Respondent, opposite parties, but the works so carried out were not measured. After interim order of injunction was vacated by the learned trial Judge the writ Petitioners opposite parties stopped further works in the said collieries and demanded the making payments of dues in respect of the works done by the writ Petitioners opposite parties which was denied. The writ application was filed for recovery of the payment of money for the works done for the period April 1, 1991, to July 25, 1991. Even though the Appellants have made a counter-claim of Rs. 223 lacs against the writ Petitioners opposite parties because of loss or damages, admittedly, the Eastern Coalfields Ltd. have failed to furnish any particulars with regard to their claims for damages, if any, in this regard. The learned trial Judge also proceeded on the footing that when regard to the counter-claim of the Appellant, the Appellant failed to furnish any particulars before the learned trial Judge, and under such circumstances the learned trial Judge has passed the said order.

5. Mr. P. K. Mallick, appearing on behalf of the Appellants duly assisted by Mr. Pratap Chatterjee and Debu Banerjee, submitted that the writ application is not maintainable as the questions are all disputed questions of fact and that the validity of the contract extended beyond March 31, 1991. After the validity period of contract if any service is rendered by the Respondents writ Petitioners on the strength of an interim order which was ultimately vacated, it should be taken that the Appellants did not take voluntarily accept the said work or did it ask the writ Petitioners opposite parties to carry on any work subsequent to March 31, 1991. It was stated that in this case initially an interim order of injunction was passed by the learned trial Judge. The said interim order of injunction continued from April 1, 1991, to July 20, 1991. It was submitted that the claim of the writ Petitioners opposite parties was a monetary claim. A writ proceeding-is not substitute for a money suit. It was further alleged that the said claim could only be made on the basis of Section 70 of the Contract Act. It was submitted that in order to sustain a claim u/s 70 of the Contract Act it must be proved as a matter of fact and law that the person who tried to be held responsible must have had an opportunity or option to accept or not to accept the benefit. In this connection reference was made to a decision of Gujarat High Court in the case of Jhala Umedsinghji Merubhabhai. Reference was also made to a decision of Madras High Court in the case of Doraipandi Konar v. Sundar Patha AIR 1970 Mad. 1991 wherein it was held that

in the second place, the section is not attracted in cases of services rendered by the claimant against (wrongly printed as at) the request of or against the will of the other party sought to be charged with.

Reliance was also placed on decision of Supreme Court in the case of State of West Bengal Vs. B.K. Mondal and Sons, wherein it was held that

Section 70 of the Contract Act is not intended to entertain claims for compensation made by a person who officiously interfere with the affairs of another or who imposes on other's service not desired by them. It is thus clear that when a thing is delivered or done by one person it must be open to the other person to reject. Therefore acceptance and enjoyment of the thing delivered or done which is the basis for the claim for compensation u/s 70 must be voluntary.

It was submitted that since the Division Bench refused to extend the stay granted by the learned trial Judge it must be held that the writ Petitioners opposite parties were not entitled to any interim order at any stage and that whatever work had been done by the writ Petitioners opposite parties was unlawful and no claim could be made for such unlawful act. Several decisions were relied on in support of the contention that if any injunction was improperly obtained in that event deriving an injunction unlawfully is entitled to such damages which are necessary and proximate result thereof. It was submitted that in the instant case because of the fact that the interim order was vacated, the interim order of injunction must be held to have been taken out unlawfully and for such unlawful act of the writ Petitioners opposite parties were not entitled to any relief whatsoever. Accordingly, it was submitted that the Appellant was not entitled to pay any damages and/or compensation for the services rendered by the writ Petitioners opposite parties against the will of the Appellant.

6. Mr. P. K. Das, learned Advocate appearing for the Respondents writ Petitioners, submitted that the writ Court within the scope or ambit conferred upon the Courts under Article 226 of the Constitution was competent to pass any order including the order for compensation, damages and or even monetary benefit. In support of this contention reliance was placed to a series of decisions which are as follows: Hindustan Sugar Mills Vs. State of Rajasthan and Others, , Mrs. Mukti Maitra Vs. State of West Bengal, , D.K. Kumar v. State of West Bengal AIR 1987 Cal. 391 , Indian Fuel and Another Vs. State of West Bengal and Others, , Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, , and also the decision of the Supreme Court in the case of Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, It was next submitted that in the instant case the learned trial Judge had passed the order on the basis of the admission made by the Appellants in the affidavit-in-opposition and that such admission was corroborated by the report of Special Officer appointed by the learned trial Judge who had measured the works on the basis of papers and documents and measurement and determination made by the Special Officer was not challenged.

The appointment of the Special Officer was not challenged, and the report made by the Special Officer was also not challenged and as such the Appellants were bound by its own admission. Next it was submitted by Mr. Das that along with the admission of the claim by the writ Petitioners opposite parties, a counter-claim was also lodged by the Appellants, but so far as the counter-claim was concerned such counter-claim was frivolous and that no materials and/or particulars or nothing could be produced before the learned trial Judge to justify such frivolous counter-claim. It was further submitted that such counter-claim was made contrary to law and facts. In this connection reference to provision of Section 95 of the CPC and that it was for the Appellants to apply for compensation and the maximum extent of compensation that can be obtained u/s 95 of the CPC was Rs. 1,000. Next it was submitted that in the instant case that there was no mandatory order passed by the Court upon the Appellants to allow the writ Petitioners opposite parties to go on with the works or continue with the works, but there was merely an order for maintaining status quo and on the basis of the order for maintaining status quo the Appellants voluntarily allowed the writ Petitioners to continue the works, and for the purpose of performing the work plastic materials and other materials were supplied at the site and that admittedly because of the works done the writ Petitioners were entitled to a sum of Rs. 76 lacs and that it would be wholly iniquitous and unfair on the part of the Appellants to deny such admission. Public authorities, it was submitted, cannot act arbitrarily, unfairly and unjustly. It was further submitted by Mr. Das that public authorities cannot be allowed to be unjustly enriched by it own voluntarily and thereafter turn down and taken technical pleas and pretext solely for the purpose of pretending the lawful and legitimate dues. It was further submitted that public authorities must set up example by acting fairly, properly and reasonably. It was submitted that the stand taken by the Appellants before this Court was wholly unreasonable and unfair being a public authority discharging public duties at the cost of public exchequer. It was submitted that Special Officer was appointed by an order passed by the learned trial Judge on April 21, 1992, but no appeal was preferred against the. said order. No objection or exception was taken to the report submitted by Special Officer under such circumstances and the Appellants have acquiesced in it and as such they are not entitled to challenge the order passed by the learned trial Judge. It was submitted that the status quo order did not mean to supply plastic materials and to go on with the works. Under such circumstances it was submitted that the Appellants' contention are misconceived and that there was no substance to the contention raised by the Appellants in this appeal.

7. The moot question is whether a writ Court can pass an order granting monetary benefit or damages arising out of any matter. In the instant case, admittedly, the claim for damages was based upon the effect of an order for maintaining status quo or, in other words, it was a case of enforcing a simple contractual obligation in writ jurisdiction. It was a case where a party has rendered some services on the strength of an order for maintaining status quo

and that after the interim order was vacated whether the Court can direct payment of money in respect of the works done by a party on the strength of such an interim order where one party has derived some advantages. The power of the writ Court is not confined only to issue of writs. Under Article 226 of the Constitution the High Courts have been conferred power to issue to any person or authority (any direction, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, co-warranto and certiorari or any of them) the expression "directions" or "orders" is wide enough to include the power of the High Court to issue any order including order for payment of money or damages as the Court may deem fit and proper, but power of the High Court under Article 226 of the Constitution to exercise supervisory jurisdiction is only over the activities of public authorities in the field of public law. the primary method by which this control is exercisable is through an application under Article 226 of the Constitution. This procedure is generally regarded a public law remedy. Writ jurisdiction only operates in the field of public law. The Courts have begun to elaborate a more generalised definition of what constitutes a public law issue which may be resolved by application under Article 226. In the past, the Courts focussed on the source of a power in determining the availability of judicial review. Powers derived from statutes and more recently the prerogatives were seen as public law powers. However, the modern approach is to consider whether the exercise of a power or purpose of duty involves a "public element". The Supreme Court in case of *Sree Anadi Mukta Sadguru v. V. R. Rudani* (Supra) " considered the scope of power of the High Court under Article 226 of the Constitution. In this case the Supreme Court held in paras. 15,16 and 21 as follows:

8. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and commission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Com. No. 73). It was implemented by the Rules of Court (Order 53) in 1977 jrfnd given statutory, force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding. called judicial review. Lord Denning explains the scope of this "judicial review". At one strickle the Courts could grant whatever relief was appropriate. Not only certiorari and mandamus but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no- cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the Applicant had to get the leave of a Judge.

9. The statute is phrased in flexible terms. It gives scope for development. It

uses the words "having regard to". Those words are very indefinite. The result is, the Courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are and who are not public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This means that the Judges can develop the public law as they think best. That they have done and are doing. There, however, the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The "public authority" for them means every body which is created by statute and whose powers and duties are defined by statute. So Government departments, local authorities and statutory authorities, Police authorities, and statutory undertakings and corporations are all "public authorities". But there is such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English Law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose."

10. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the nature. Commenting on the development of this law, Professor De Smith stated:

To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. (Judicial Review of Administrative Act, 4th ed., P. 540)

We share this view. The judicial control over the first expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the Appellants on the maintainability of the writ petition.

11. In England with regard to public law principles regulating the exercise of contractual power the Courts have been prepared to super-impose public law principles into contractual situations and to ensure the observance of those principles by way of judicial review. They are prepared to do even if the effect of granting public law remedy is to vary the right existing under a contract. Where a decision to terminate contract is quashed and the contractual provisions then revived. (See Judicial Remedies in Public Law by Clive Lewis, at 53-54). In *R. v. Liverpool City Council, ex parte Ferguson and Ferguson*, (1985) I.R. L.R. 501, the Divisional Court had held that decision not to pay wages due under a contract of employment could constitute both a breach of contract and also be so unreasonable in the public law since that judicial review would be available to correct the error. The Divisional Court did grant the application for judicial review

and declared that the decision to withhold wages was unlawful. Principles of fairness had developed to a large extent in recent times and fairness is being developed as an independent concept and not only in relation to natural justice itself, *Selvarajan v. Race Relation Board* (1975) 1 W.L.R. 1686 In *Hindusthan Sugar Mills v. State of Raj as than* (Supra) the Supreme Court observed that we hope and trust that the Central Government will honour its legal obligation and not drive the Appellant to file a suit for recovery of the amounts of sales tax. We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen and a State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand. In *Mrs. Mukti Moitra v. State of West Bengal* (Supra) " where the High Court following *Hindusthan Sugar Mills* (Supra) " directed payment of the admitted claim of the writ Petitioner by issuing a mandamus on the ground that the claim of the writ Petitioner was an admitted one "and it was only just and fair that the State should make payment on a writ petition, because the Government cannot act arbitrarily at its sweet will and that every activity of the Government must have a public element in it and must therefore be informed with reasons and guided by public interest and that such activities will be liable to be tested for heir validity on the touchstone of reasonableness and public interest, and if it fails to satisfy such test it would be unconstitutional and valid. The State Government cannot act arbitrarily even though the matter arises out of a contractual obligation. In the case of *Indian Fuel v. State of West Bengal* (Supra) " it was also held by the Single Judge of this Court that the writ Court has every jurisdiction to award compensation upon loss to a party by State Machinery or by public authority in violation of the rights of such parties. In that case it was also held that unless the Courts have such power to award compensation in appropriate cases the fundamental rights granted to its citizen by our Constitution would become a mere leave service. Accordingly, there cannot by any doubt that the writ Court is competent to pass any order even for payment of money and/or for damages as the scope of Article 226 of the Constitution is not confined to issue of only writs but also conferred with the power to issue any direction or order. Such directions or orders may travel beyond the scope of the recognised writs. If it is held that the Courts have no such powers that would be contrary to the powers conferred by the Constitution under Article 226 of the Constitution upon the Courts.

12. Next question is whether anything done on the strength of an interim order of injunction the Court is entitled to pass an order to make good the loss. It is well-settled principle that a party cannot be allowed to be unjustly enriched by an order passed by the Court. In the instant case, there was order for maintaining status quo and on the strength of order of status quo the Appellant allowed the writ Petitioners opposite parties t" perform the works, and for performing the works the Appellants have supplied plastic materials and/or

explosives and that writ Petitioners opposite parties performed such job the value of which was Rs. 76 lacs was clearly admitted. In view of such admission made by the Appellant, the Appellant would be allowed to go back from that position. True the Appellant also alleged the counter-claim, but before the learned trial Judge no particulars were furnished in support of such counter-claim. Public authorities when making a counter-claim before a Court of law are bound to make on materials in support of such claim, but as the Appellants have failed to furnish materials before the learned trial Judge, the right of the Appellants of such a claim, or in other words, the rights of the Appellants in support of such counter-claim would be frustrated and for the purpose of enforcing any possible decree the learned trial Judge has also passed an order for furnishing bonds by the writ Petitioners opposite parties to the extent of Rs. 50 lacs, but the Appellants have preferred this appeal challenging the jurisdiction of the learned trial Judge to pass such an order. It is admitted that the Appellants did not challenge the validity of the order appointing the Special Officer who was appointed by the learned trial Judge for the purpose of assessing the works done.

12A. It is not disputed that the Appellants' officers co-operated with the Special Officer to produce all records and documents, and from, the records and documents it was clear that the Appellants have performed the job to the extent of Rs. 76 lacs which was admitted but a counterclaim was made by the Appellants. Report of the Special Officer was not challenged. Under such circumstances it is evident that the order that was passed by the learned trial Judge cannot prejudice the claim of the Appellants if the Appellants can establish before a Court of law. If on the strength of an interim order of a party performs the work in that event the Court which passed the order retains its jurisdiction to pass appropriate order for the purpose of compensating the party loss or injury suffered during the continuance of the interim order. In the instant case, the writ Petitioners opposite parties rendered services which was accepted by the Appellants, and that the Appellants were unjustly enriched by the works" done or the services rendered by the writ Petitioners opposite parties and that being a public authority the Appellant cannot take a stand which is contrary to the principles of fairness inasmuch as public authority cannot act as it pleases like individuals. Public authority is bound to act reasonably and in public interest. Public authorities cannot take a legalistic attitude to defeat the legitimate claim of the citizen. But they should do what fairness and justice demand and as pointed out in the Supreme Court in Hindusthan Sugar Mill's case (Supra) When of the strength of an order for maintaining status quo the Appellants have allowed the writ Petitioners opposite parties to render such services and for the purpose of rendering such services they voluntarily supplied with the materials inasmuch as there was no order by the Courts to supply with the materials for the purpose of discharging such duties and functions, and when the Appellants have admittedly derived benefits of services rendered by the writ Petitioners opposite parties in the facts and circumstances of the case, we are of the view that the Courts have power to grant such relief as has been granted in the

instant case. In *In Re: Veeral alias Kanai*, in which it was held that the principle laid down u/s 70 of the Indian Contracts Act is not applicable in case the persons sought to be charged with the liability did not wish to have rendered or in other words to invoke the principles of Section 70 of the Indian Contract Act it has to be proved that such services were rendered not against the will of the other party. These principles have no manner of application in the instant case inasmuch as in the facts and circumstances of the case the Appellants have acquiesced in it by its own voluntary act. Voluntarily supplying with the plastic materials and maintaining accounts and giving facilities to perform such works clearly indicates the motive of the parties and the Appellants after voluntarily allowing the writ Petitioners opposite parties to render services to the benefit of the Appellants, the Appellants cannot avoid it on the principle that the Appellants were forced to accept such services and the Appellants did not wish to get such services rendered. In the affidavit-in-opposition the Appellants had taken the only stand that the writ Petitioners opposite parties were allowed to continue the works as the Appellants have no alternative but to allow to retain at site and continue to work in due deference to the order passed by this Court. This was not correct at all. There was no order by the Court to allow the writ Petitioners opposite parties to continue the work and there was no direction upon the Appellants in this behalf. The Appellants by their own acts and representation encouraged and induced the writ Petitioners opposite parties to perform such works. Encouragement or acquiescence creates an estoppel. Ref. *Ramsden v. Daison* 1866 L.R. 1 H.L. 129 " In "The Law relating to Estoppel by Representation" at p. 304 it was observed that:

If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him preservers in his error, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his, own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state my adverse title and that it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake which I might have prevented: But it will be observed that to raise such an equity two things are required, first, that the person expending the money suppose himself to be building on his own land, and secondly, that the real owner at the time of the expenditure knows that the land belongs to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my conduct, active or passive, making it inequitable in me to assert my legal rights.

13. In the same case Lord Wenaleydal says:

If a stranger builds on my land, supposing it to be his own, and I, knowing it to be mine, do not interfere, but leave him to go on, equity considers it to be

dishonest in me to remain passive and afterwards to interfere and take the profit.

14. On the basis of the aforesaid principles, in my view, the learned trial Judge considered in the facts and circumstances of the case and on the basis of the measurement obtained by the Special Officer who has obtained such information on the basis of books, papers and documents that were placed before him by the parties, rightly directed the Appellants to pay the said sum. Public authorities cannot take a stand which is not fair and proper. Public authorities cannot defeat the legitimate claim of any party on purely technical pleas or pretext. In the facts and circumstances, it cannot be said that the vacating the interim order relates back retrospectively and anything done on the staying of an order is wiped out.

15. Accordingly, it is a case where the principles underlying Section 70 of the Contract Act have no manner of application inasmuch as it was not a case that something was done forcibly by the writ Petitioners opposite parties against the will of the Appellants and, secondly, it is the fundamental legal principles that an interim order of injunction passed by a Court cannot act to the prejudice of any person and that it would be wholly an iniquitous to hold that a person who has performed duties after performing an interim order would not get anything for the service rendered even in case of granting injunction in properties matters Court grants interim order of injunction and that damages are levied by the Court in such use and occupation on the strength of interim order. In such case also on the strength of interim order of injunction and that the damages are levied by the Court in such use and occupation on the strength of interim order. In such case also on the strength of interim injunction the owner and/or landlord of the property is compelled to allow the tenant or persons in occupation to continue in occupation and that the Court should compensate the loss of the landlord or the owner by way of damages payable by persons in occupation on the strength of interim order of injunction. If the Court grants injunction, it is equally the duty on the part of the Court to see that if any person does anything and performs anything on the strength of the interim order is compensated for the same. It would be contrary to justice and fair play to hold that on the strength of interim order if a party derives any benefit and at the cost of the persons at whose instance the interim order was obtained" and thereafter interim order was vacated and then anything done during the period of injunction becomes void or invalid. It is not the case where a person has obtained an order in gross abuse in the process of the Court and it was a case where interim order was obtained on contest and ultimately. The interim order was vacated. The vacation of the interim order cannot make anything done during the continuance of interim order invalid or non-est in the eye of law. We are of the view that the learned trial Judge has sufficiently protected the interest of the Appellants and at the same time granted relief to the Petitioner on conducting of furnishing a bond for Rs. 50 lacs. The learned trial Judge rightly relegated the Appellants to a suit for establishing its counter-claim in accordance with the law as counter-claims are not admitted. So far as the claim of the Respondents writ Petitioners are concerned that it is admitted by the Appellants, and once Appellants have

admitted the same, we do not find that the learned trial Judge has committed any error in directing the Appellants to pay the same after protecting the interest of the Appellants.

16. Accordingly, we do not find any reason to interfere with the order passed by the learned trial Judge.

17. The direction given by the learned trial Judge in so far as the executing the bond as well as the other directions will be effective from today, May 6, 1993.

18. We make it clear that we have not adjudicated on the question on interest which is left open.

19. The appeal is dismissed.

20. There will be no order as to costs.

21. On the prayer of the learned Advocate for the Appellants, let there be an order of stay of the operation of this judgment and order for a period of six weeks from date.

22. All parties concerned to act on a signed copy of the minutes of the operative part of this judgment and order on the usual undertaking.

Amal Kanti Bhattacharjee, J.: I agree.